

# City of Clinton / Clinton Police Bargaining Unit

2006-2007  
CEO 162  
SECTOR-2

In the Matter of the  
Dispute between

THE CITY OF CLINTON, IOWA

And

CLINTON, IOWA POLICE  
BARGAINING UNIT ASSOCIATION

Iowa Public Employment  
Relations Board Case CEO  
#162/ Sector 2

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IOWA PUBLIC EMPLOYMENT  
RELATIONS BOARD

## FACT-FINDER'S RECOMMENDATIONS

### Appearances:

Attorney William J. Sueppel, Meardon, Sueppel & Downer, P.L.C., on behalf of the City.  
Attorney G. Wylie Pillers III, on behalf of the Police Bargaining Unit.

On March 9, 2007, in Clinton, Iowa, a hearing was held before the undersigned who was selected as a Fact-Finder by the parties under the Iowa Public Employment Relations Act, as amended, hereinafter referred to as the "Act," to make recommendations concerning collective bargaining issues about which the parties are at impasse.

## BACKGROUND

The City of Clinton, Iowa, hereinafter referred to as the City, is an Iowa political subdivision with a population base of approximately 28,000 located on the Mississippi River in eastern Iowa covering approximately 35 square miles of incorporated city limits. The Clinton Police Bargaining Unit, hereinafter referred to as the Bargaining Unit, is comprised of employee's in the City's Police Department. At the time of the Fact-Finding hearing, the Bargaining Unit consisted of 48 sworn officers (27 patrolmen, 7 corporals and 7 sergeants) as well as 8 non-sworn officers (two public service officers-PSOs, an animal control officer-ASO, a receptionist, a secretary, CID Specialists, and a recording clerk.

Two other groups of the City's employees are also represented by unions, the firefighters and an AFSCME unit of other non-supervisory City employees. Contracts with respect to these other two units have been settled for 2006 and 2007, the year in dispute, as part of three year settled agreements.

The parties have engaged in bargaining for a successor collective bargaining agreement, effective July 1, 2007 to June 30, 2008. They have settled most of the provisions for the successor agreement but have not been able to resolve their differences with respect to nine impasses items: (1) Wages; (2) Shift Commander Compensation; (3) Field Supervisor Compensation; (4) CID Compensation; (5) Comp Time Carryover; (6) Bereavement; (7) Non-Sworn Longevity; (8) Canine Unit provision; and (9) Educational Reimbursement.

In making my recommendations as to the impasse items set forth below, I have considered, among other arguments, the factors specified in the Act as those that must be considered by arbitrators, namely, Section 20.22, Subdivision 9, Code of Iowa, set forth as follows:

The panel of arbitrators shall consider, in addition to any other relevant factors, the following factors:

- a. Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.
- b. Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.
- c. The interest and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.
- d. The power of the public employer to levy taxes and appropriate funds for the conduct of its operations.

#### WAGES, OUT OF RANK PAY FOR SHIFT COMMANDERS/FIELD SUPERVISORS, CID EMPLOYEES, AND LONGEVITY INCREASES FOR NON-SWORN EMPLOYEES

The City is proposing a 3.12% wage increase across the board. The Bargaining Unit proposes a base wage increase of 3.5% and additional out-of rank pay increases of 2.5% for both the Shift Commander Sergeants, Field Supervisor Corporals, and an additional out of rank pay increase of 3% for CID employees. In addition to the 3.5% across the board increase, it also proposes a \$125.00 increase in longevity payments annually for all non-sworn employees who are eligible for longevity.

The City does not offer any additional premium pay for these positions nor does it propose to increase longevity for the non-sworn employees. It calculates the total cost of the Bargaining Units wage proposals with the inclusion of the out of rank premium pay and longevity payment to the non-sworn employees to be 4.55%.

#### Position of the Bargaining Unit

The Bargaining Unit argues that a reasonable base salary pay increase commencing July 1, 2007 is 3.5%. It points to the cost of living from July 1, 2005 to June 30, 2006 (Consumer Price Index for Midwest "all Items") as increasing by 3.48%, noting that for the period from January 1, 2005 to December 31, 2006 the increase was

just 5/8%. From January 1, 2000 to December 31, 2006, the increase (based on the Midwest Index) was 17.2%. Increasing the base entry level pay 3.5% will increase the pay for a 3<sup>rd</sup> Class Officer to \$35,069.76.

The Bargaining Unit cites the cities of DeWitt (18 miles distant with entry level pay of \$38,058.90), Waterloo (90 miles distant with entry level pay of \$37,980.00), Bettendorf (20 miles distant with entry level pay of \$37,899.00), and Dubuque (50 miles distant with entry level pay of \$41,995.00) as comparables. With the exception of DeWitt, none is smaller than Clinton. These are all communities with populations of 28,000 or more. It argues that Clinton's entry level pay under its proposal will be \$33,883.83 under its proposal, far lower than that of the comparables. Noting that the number, level and type of criminal offenses for these communities are all similar, the Bargaining Unit argues that Clinton is on a direct route from Chicago and only 60 miles from Rockford, Illinois and has greater crime because of the proximity to major metropolitan areas than some of its more rural counterparts.

The Bargaining Unit, citing re-organization and changed assignments to certain bargaining unit sergeants and corporals, argues that a 2.5% premium out-of-rank pay is appropriate for those Sergeants serving as shift commanders and those Corporals serving as field supervisors. Testimony by Captain Michael Gertson, Chief Brian Guy, and Sergeant St. Ores establishes that Sergeants assigned to be shift commanders have assumed many of the duties previously assigned to Captains who functioned as shift commanders. These Sergeants now have the direct responsibility for what happens on their respective shifts. Corporals who function as field supervisors have in turn assumed responsibilities previously performed by Sergeants who functioned as field supervisors prior to the reorganization.

It is the Bargaining Unit's position that a Sergeant serving as a shift commander or a Corporal serving as a Field Supervisor is in effect serving in a new position "out of rank." They are not serving as a Sergeant or Corporal on the street but have been given greater responsibilities and duties greater than the Sergeant or Corporal on street patrol. They should therefore be compensated accordingly. While originally the pay sought for a Sergeant serving as Shift Commander was equal to the pay received by a Captain, the Bargaining Unit now requests an increase of 2.5% which would equal a \$.59 per hour increase while serving in that position. Taking a Sergeant with 10 years of service who currently earns \$49,116.20 or \$23.61 per hour, the 2.5% premium would result in an additional \$1,227.20 per year or a salary of \$50,336.00 per year. Utilizing the 10-year Corporal as a benchmark, the 2.5% rate would increase the officers pay by \$1,172.23. Total cost to the City will be \$4,980.20 (4 Sergeant Shift Commanders) and \$4,688.90 (4 Corporal Field Supervisors) or \$9,669.10. Because the reorganization and re-assignment of duties was strictly a managerial decision, the City should not expect its employees to take increased supervisory responsibilities without compensation. Given the nominal cost increase of .002% over the 2006-2007 Department payroll, the fact finder should find the proposals to be reasonable.

The Bargaining Unit is requesting a 3% out-of-rank premium pay increase for those employees serving in the Criminal Investigation Division or the CID Unit. It takes the position that each of these officers is also serving out of rank given the specialized nature of the unit and the varying hours and specialized training in investigating major crimes and under cover investigations. The 3% increase is supported by the specialized work that these officers are performing. Given the importance of the CID Unit for qualified and experienced officers and the total cost increase to the City of .0046 percent, this premium pay request is also justifiable and necessary.

With respect to longevity for the non-sworn employees, the Bargaining Unit stresses that these employees do not have the benefit of a longevity matrix in the contract nor can they look forward to promotions through different ranks with pay increases as the sworn officers enjoy. They receive a percentage increase in a salary year with a nominal payment for years of service. Longevity payments have not been increased in over six years. When looking at the cost of living increases over that time, an increase of \$125.00 per year for each employee who receives longevity pay would seem reasonable to compensate them for their years of service.

#### Position of the City

The City is proposing a 3.12% wage increase, which it claims is right in line with its other union and non-union employees. As part of two or three-year deals negotiated last year, for the year beginning July 1, 2007, the fire employees settled for 3.25%, employees represented by AFSCME for 3%; and non-union employees were given 3%. The City's proposed wage increase keeps the unit ahead of the inflation rate which it argues is under 3%. The City's proposed wage increase is also in line with the wage increases received by the police over the last several years. When the City's proposed increase is added to last year's total increase, which the City calculates at 4.75%, the average for the two years is just under 4% (3.94%). This increase is by far the best 2-year wage increase of the comparable cities, and it is believed to be better than any police department in the State of which the City is aware over the last two years.

The City cites different communities as comparables than those utilized by the Bargaining Unit. It compares itself with Marshalltown (149 miles distant), Muscatine (70 miles distant), Ottumwa (177 miles distant), Cedar Falls (146 miles distant), Mason City (221 miles distant), and Burlington (116 miles distant). Of these comparables, Muscatine and Burlington have populations four to two thousand people less than Clinton while Cedar Falls has a population exceeding Clinton's by eight thousand.

According to the City, the Bargaining Unit's proposal of a base wage increase of 3.5% and the additional increases demanded for the shift commander, field supervisor and CID amount to a 4.55% wage increase for the unit excluding longevity improvements for the non-sworn employees. No comparable police department in the State of Iowa is paying a 4.5% wage increase. Furthermore, the proposed wage increase coupled with the last year's 4.75% wage increases amounts to a 4.65% increase for the last two years. The

Bargaining Unit's proposal is exorbitant and not justified under any circumstances, let alone under the current economic conditions faced by the City of Clinton. The Bargaining Unit's proposal will cost the City approximately \$32,000 more than the City's proposal.

The City alleges that its economy is currently challenged as it is receiving less in revenue annually than it is paying out. Given these financial conditions, a 4.5% wage increase should not be imposed upon the taxpayers of Clinton. The City's proposal of 3.12% is more reasonable and economically sound given the City's financial health and is in line with what other city employee have received. The City believes that it is important that all city employees receive comparable wage increases and historically this has been the case. Granting one group of employees a substantial increase over other groups can lead to dissension and animosity.

With respect to the out-of-rank premium increases requested for Sergeant Shift Commanders, Corporal Field Supervisors, and CID employees, the City stresses that these positions are filled by sergeants and corporals who already receive at least a 4.5% step increase over a patrol officer and that the additional pay on the sworn officers' matrix is sufficient to compensate the employees for the additional duties. It stresses that no additional management authority or responsibility has been put upon these employees justifying a greater than 1% increase.

Insofar as the Bargaining Unit's increased longevity request is concerned, this is a provision that none of the City's comparable communities enjoy. Therefore, the City does not see a need to increase the non-sworn employee's longevity pay. The cost of the proposal amounts to .4% and the combined wage increase of nearly 4% is not justified for the non-sworn employees.

#### Findings of Fact and Recommendation

The parties went to Fact-Finding and Interest Arbitration because they were at impasse with respect to the previous collective bargaining agreement effective July 1, 2006 through June 30, 2007. Arbitrator M. Hill, Jr.'s decision with respect to the previous contract is relevant and instructive insofar as it establishes the external comparables to be considered in the instant proceeding and how Arbitrator Hill and Fact-Finder Miller<sup>1</sup> viewed the wage issues vis-à-vis the health insurance proposals upon which the parties were at impasse at that time. Hill and Miller accepted both comparability groups for analysis based upon population, location, and number of bargaining units in comparison with Clinton. The undersigned will take the same broad view. However, in this particular instance it appears that the cautionary advice advanced by Arbitrator Herbert Berman in *City of Peru and Illinois Fraternal Order of Police Labor Council*, S-MA-93-153 (IL, 1995) is instructive and applicable. He noted that

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<sup>1</sup> The Fact-Finder's decision with respect to the 7/1/06-6/30/07 agreement was not presented to the undersigned. All references are taken from Arbitrator Hill's interest arbitration award

An arbitrator must be mindful that within a large range of possibilities a party may have selected only those cities that support its positions. When in doubt, it makes sense to fall back on the comparables they themselves have selected.

Here, the record made to the undersigned has been selectively presented by each party with respect to its proposed comparison group. The absence of standard wage information with respect to both sets of comparable cities makes it difficult to make accurate comparisons. Accordingly, at times it is the absence of information on the part of one party or the other that mandates the acceptance of underlying facts provided by the opposing party as accurate and true.

The previous fact-finder's and arbitrator's view of the *quid-pro-quo* involved in adopting the wage proposals must also be considered in reviewing the past collective bargaining contracts between the parties including the bargaining that led up to such contracts. It would be unfair to place too great an emphasis on the total economic package granted to the Bargaining Unit by the interest arbitrator in the previous year, i.e. the City's representation that the total wage increases as of 7/1/06 was 4.75%, that total increase including a .25% increase to the rank steps and .25% for longevity steps. The Bargaining Unit's representation that the wage increase was a 3.5% across the board increase along with the .25% increase to the rank steps and to the longevity steps on the sworn officers' matrix more accurately represents what the interest arbitrator awarded. Giving too much weight to the total money spent on wages by the City, i.e., 4.75% when evaluating the reasonableness of the wages offered over a two-year period of time, would be unduly punitive of the Bargaining Unit, given the express findings in both the Miller opinion and the Hill award at p. 12 that the .25% step increases in both rank steps and longevity were granted as a *quid-pro-quo* for the City's health insurance proposal.

Accordingly, it is fair to consider the wage increase for 7/1/06 to 6/30/07 to more closely resemble the 3.5% represented by the Bargaining Unit for purposes of analysis of wages over a two-year period because this represents the increase without taking into consideration the *quid-pro-quo* for the health insurance proposal. When City Exhibits 4 (the internal comparables) and 5 (the external comparables) are viewed with this figure in mind it does not appear that this Bargaining Unit was overpaid as of July 1, 2006 or that an across-the-board wage increase of 3.5% for the current contract will be unreasonable.

The City has not provided evidence with respect to the current salaries of employees in the comparison group upon which it is relying. It has only presented the percentage increases offered. There is no way of measuring what the percentage increases will do to the position of the Clinton sworn officers at various benchmarks. However, reviewing the percentages offered to the City's comparison group, at least three of the six comparables relied upon by the City will be paying a 3.5% wage increase to their police employees. Furthermore, Police Chief Guy in his testimony indicated that a 3.5% across the board increase was sufficient compensation. The 3.5% across-the-board increase will also have the effect of raising the starting salary to make it more comparable to the Bargaining Unit's cited comparison grouping and easier for the City to hire. Considering the statutory criteria set forth in Section 20.22, Subdivision 9, I recommend

a **3.5% across the board raise for the employees represented by the Clinton Police Bargaining Unit.** It will best keep the Police employees in relative position with the external comparables, addresses the cost of living, raises the starting salary and does not unduly inflate the total wage costs paid by the City.

The Bargaining Unit has also proposed "out-of-rank" premium pay increases which the City opposes for Shift Commanders, Field Supervisors and CID. There is some merit to the arguments advanced by both parties pro and con. The undersigned is persuaded that at least with regard to the Sergeant Shift Commanders and Corporal Field Supervisors, their duties have been significantly expanded over the past two years. Furthermore, based upon the testimony of Captain Gertson and Chief Guy, it appears that the job descriptions for Shift Commander and Field Supervisor are in the process of being modified. Given the substantial expansion of job duties, a premium for these employees is in order. However, the 2.5% requested by the Bargaining Unit is not warranted and has not been established as necessary. **An "out-of-rank" premium pay increase of 1% is recommended to compensate both Sergeants and Corporals who serve as shift commanders and field supervisors for the term of this contract.** Given the changes contemplated in job descriptions, the parties should re-visit this issue after the re-organization and amendment of the job descriptions is accomplished in future collective bargaining agreements.

The Bargaining Unit has not presented a convincing argument that an "out-of-rank" pay increase is warranted for the CID employees. There has been no showing that their job duties have increased or changed so as to justify a percentage add-on. Accordingly, **no "out-of-rank" pay is recommended for performing CID duties.**

The Bargaining Unit requests \$125 increases in longevity pay for all non-sworn employees who are eligible for longevity pay. It has not, however, cited any external comparables to justify its request for said increase. Furthermore, there has been no showing that the City has difficulty retaining more senior non-sworn employees or that there is a substantial reason for increasing the longevity payments that non-sworn employees currently receive. Therefore, **no longevity increase is recommended for non-sworn employees currently eligible to receive longevity.**

#### COMPENSATORY TIME CARRY-OVER

The City proposes to retain the current contract language while the Bargaining Unit is requesting an increase to a maximum carryover of 75% of accumulated compensatory time or 50 hours, whichever is greater. The applicable current contract language is as follows: "Compensatory time may be accumulated by each officer to a maximum of 100 hours compensatory time to the next calendar year. Employees shall have the option to convert all during the calendar year. Each officer may carryover a maximum of 50 hours of or part of their accumulated compensatory time to a cash payment on the last day of each month provided they notify the Records Clerk at least seven (7) days prior to the last day of said month."

### Position of the Bargaining Unit

According to the bargaining unit, at issue is the amount of time the officers have been required to work in the last three years. At times, the Department has been short five to seven sworn officers and the shortage is exacerbated by the minimum staffing requirements of five officers per shift. In 2006, the Department paid for 9418.78 overtime hours so that the average per sworn officers was 241.48 overtime hours or 20.12 days per year. Compensation is not the issue. Rather the issue is time off and adequate quality time for family, sleep and recuperations. Increasing comp time and allowing carryover give more flexibility to the officers and is reasonable under the circumstances.

### Position of the City

The City maintains that the current comp time benefits is appropriate and reasonable and does not need to be changed. The current comp time benefit is as good or better than that offered by comparable cities. It points out that there are only a few officers affected by the 50-hour carry-over cap, only two being close to the 50-hour limit at the present time, and that this has generally been true over the years. Moreover, the City points out that the proposal does not accomplish what the Bargaining Unit claims it desires, i.e., less overtime. The City's main objection to any additional carryover is financial because hours earned in one year are paid out at a higher wage rate when it becomes necessary to pay them out the next year. Furthermore, the use of comp time generates overtime for other officers who need to be called in which leads to additional compensatory time. The City desires to control these expenses to the extent that it can. This benefit should not be changed.

### Findings of Fact and Recommendation

The conditions described by the Bargaining Unit remain as persuasive for this new agreement as they did in the proceeding before Fact-Finder Miller. In fact, the underlying number of overtime hours worked by bargaining unit members appears to have served as the basis for the adoption of the proposal by Arbitrator Hill. The solution proposed by the Bargaining Unit regarding increasing the number of carry-over hours has not, however, addressed the underlying problem of officers being assigned and working too much overtime. In reviewing the City's comparisons, three of the six enjoy better carry-over benefits than Clinton. Comp time is not addressed in Mason City's collective bargaining agreement and two cities specify accumulation and carry-over benefits inferior to those enjoyed by Clinton officers. The Bargaining Unit has not disclosed what the relevant benefits are with respect to its comparison group. Given that the increase to 50 carry-over hours appears to be a newly-imposed benefit from the last interest/arbitration adopted as part of the health insurance *quid pro quo*, the mixed conclusions to be drawn from the comparison groups, and the fact that this provision does not appear to be reducing the amount of overtime worked at this time, **increasing the current comp time carry-over benefit at this time is not recommended.**



## BEREAVEMENT LEAVE

The Bargaining Unit proposes to increase the language of the bereavement article to include a full day for service as a pallbearer. The City proposes to retain the current contract language which does not provide a specific grant of time to serve as a pallbearer stating only as follows: "Pallbearer leave shall be granted by the Police Chief or his authorized representative.

### Position of the Bargaining Unit

Currently there is no allotment for time off for pallbearers. Traditionally officers have been granted only sufficient time to serve as a pallbearer at the funeral. Given that funerals generally occur in the late morning hours and include the services of a pallbearer at the cemetery and conclude with some type of family gathering after the cemetery services, the officer absence is usually at least four to six hours. In the view of the Bargaining Unit, it makes little sense to require the officer to come to work in uniform, leave in an hour or two, change into suit and tie and go to the funeral and then require him to return to work for an hour or so. These are not productive hours. Furthermore, pallbearer service does not occur too often and is not abused.

### Position of the City

According to the City, the existing bereavement leave policy is the most lenient of any of the comparable cities. The current contract provision permits the Police Chief to grant pallbearer leave. Allowing the time off to serve has never been an issue. The real issue is who pays for the time off. Recognizing the proposal as another request for time off with pay, the City insists that the officers can always utilize comp time, vacation time or other accrued leave in order to take the time off with pay. The City does not believe that it should be required to give paid time off to employees who serve as a pallbearer. It stresses that the City has the best funeral leave among the comparables and that under the current contract its bereavement leave is very generous. The City simply does not want to pay for another day off.

### Findings of Fact and Recommendation

There is no evidence that other city employees enjoy this benefit or that employees in the external comparison groups enjoy such a benefit. Furthermore, it does not appear that Bargaining Unit members have had problems getting the appropriate time off to serve in this capacity. Rather, the issue is as the City characterizes it, one of who pays for the time off. Having failed to gain it in bargaining, without a showing that the benefit is enjoyed by similarly situated employees, and having failed to demonstrate a problems in gaining the time off to serve, **it is recommended that the Bargaining Unit's proposal be rejected and that the current contract language remain in place for the 7/1/07-6/30/08 collective bargaining agreement.**

## CANINE UNIT

The City is considering the re-introduction of a canine unit within the Police Department. There is currently no contract language in the parties' agreement to address this. The Bargaining Unit does not oppose this and notes that with certain adjustments, the procedures, practices and customs which previously applied to the canine handler are acceptable.

The City proposes the following language:

If the City decides to implement a canine program, the canine handler would work either an 8-hour or 10-hour rotating shift as determined by the City, in consultation with the canine handler. The final decision on scheduling will be made by the City.

The canine handler will receive ½ hour off for every day the handler is scheduled to work, to be used for canine training and maintenance. The handler will be (sic) receive ½ hour of pay for those days that the handler is not scheduled to work, at the straight time rate. Time compensated for training and maintenance shall not exceed 3.5 hours in a week.

On those days that the canine handler uses a comp day, a sick day or a vacation day, the handler will only be charged 7.5 or 8.5 hours, depending on the shift. The uncharged time would be time granted for training and maintenance.

The City assumes responsibility for the boarding of the dog when the officer is on vacation, out of town or unavailable due to medical or emergency situations.

The Bargaining Unit proposes:

- (A) Canine handler would have the option to work either the proposed eight 8 hour rotating shift or the ten (10) hour rotating shift schedule presented to the Union/Management Committee meeting on December 1, 2006.
- (B) The canine officer, having chosen a shift, must stay on that shift for one year.
- (C) At the end of the year, the canine handler may choose or opt to work the other available shift.

- (D) The canine handler would receive one hour off every day for each day that he is scheduled to work. In addition, the canine handler would receive one hour of overtime for those days he is not on duty.
- (E) On those days when the canine handler uses a comp day, sick day, vacation day or is unavailable for work, the officer would only be held accountable for seven (7) or nine (9) hours on the elected shift. The remaining hours would be assigned to K-9 Unit Maintenance.

The primary difference between the two proposals lies in the time assigned for care and maintenance of the dog and who determines the shift that the canine handler and dog will work.

#### Position of the City

The City maintains that only ½ hour per day will be needed for routine care and maintenance such as feeding watering, grooming and exercising the dog. The City would limit the time off to one-half hour so as to comply with the Fair Labor Standards Act without paying overtime. The Union's proposal of one hour per day will result in too much overtime. The City also objects to the Union's proposal insofar as it grants the employee the right to choose the shift maintaining that this is a management prerogative that it does not wish to surrender.

#### Position of the Bargaining Unit

The Bargaining Unit points out that when the City had a canine unit in the past the officer received one hour of pay rather than the ½ hour proposed by the City. In its view one-half hour is not close to being a reasonable estimate of the time spent in caring for the dog. It notes that the officer is responsible for cleaning the kennel, cleaning the yard, exercising the dog, socializing the dog to be with the family, cleaning the squad car, grooming of the dog and providing home owners insurance in the case of an accidental bite. The Bargaining Unit argues that it is only fair that the canine officer have some choice in whether to work an 8 or 10-hour shift because he or she is most sensitive to the abilities of the specific dog. It suggests that the time allotted be at the beginning of the shift rather than at the end of the shift because often the officer is not able to leave one hour early to care for or maintain the dog. When this occurs, the care of the dog results in additional work with no overtime compensation. The Bargaining Unit doubts that any officers will volunteer for this duty if ½ hour is the compensation. Prior experience suggests that a minimum of one hour per day is necessary to properly care, train and maintain the canine.

### Findings of Fact and Recommendations

Generally speaking, the City's proposed language is preferred over that advanced by the Bargaining Unit because it leaves control of the shift and scheduling of the canine officer with the management. The Bargaining Unit has, however, made the case that ½ hour is insufficient for the routine care and maintenance of the dog. The testimony of Sergeant St. Ores along with the previous practice of allotting one hour when the City had a canine unit in the past persuades the undersigned that the City's language amended to reflect a one-hour daily compensation for the care, socializing, training, etc. of the dog is reasonable. **It is recommended that the City's language proposal amended in all respects to reflect one-hour pay or credit for canine training and maintenance is be implemented.**

### EDUCATION REIMBURSEMENT

The Bargaining Unit proposes to maintain the current contract language covering reimbursement for educational expense which provides as follows:

"The Employer agrees to reimburse sworn officers and the office secretary for the expenses incurred in taking college credit courses required for an A.A. Degree in law Enforcement or 60 hours of credit toward a degree in law enforcement, whichever occurs first. Reimbursable expenses shall be limited to the cost of tuition and books, which are not assumed by any institution, scholarship, grant-in-aid or any type of financial assistance. The employee shall obtain course approval from the Police Chief prior to taking the course. Reimbursement will be made upon: 1. Presentation of a receipt showing the expense incurred. 2. Evidence of satisfactory completion of the course. 3. Surrender of any textbooks, purchased by the City, for replacement in the Police Department Reference Library. An arbitration decision by John Baker dated December 28, 1998 has interpreted this article."

The City has proposed an amendment to the education reimbursement provision of the contract that limits the number of hours that the employee will be reimbursed for education expenses. Its proposed language is as follows:

"The Employer agrees to reimburse sworn police officers and the office secretary for expenses incurred in taking up to 60 hours of undergraduate college credit course required for a degree in law enforcement, criminology or criminal justice. Graduate level courses will not be reimbursed. The course work must be pursued at an accredited educational institution. Course work must be scheduled outside normal working hours and may not interfere with the employee's duties for the City. Reimbursement shall be limited to the cost of tuition and books which are required for the course and which are not assumed by any institution, scholarships, grant in aid or other type of financial assistance. The employee will make efforts to receive any scholarships, grants, or

other financial assistance available to assist with the reduction of expenses. The employee shall obtain approval from the Police Chief prior to registering for the course or shall not be eligible for reimbursement. Reimbursement will be made upon: 1. Presentation of a receipt showing the expenses for which reimbursement is requested 2. Employee must receive a letter grade of C or better to be eligible for reimbursement. In the event the course did not have a grade assigned, evidence of satisfactory completion must be submitted 3. Any books, the cost of which was reimbursed by the City through this education reimbursement, shall become the property of the City. Education reimbursement will be capped at \$6,500 annually for the entire bargaining unit. Reimbursement will be provided on a first come, first served, basis or based on seniority as the bargaining unit determines. Employees who leave the employment of the City shall reimburse the City for all education expenses paid by the City in the previous 12-month period, except where termination is due to disability, death or layoff. The 12-month period will be calculated from the date of reimbursement."

#### Position of the City

The City's proposal limits the number of hours that an employee will be reimbursed for education expenses and limits reimbursement to undergraduate level course. At this time the contract has no caps on education reimbursement and the new proposal caps the amount of reimbursement to be paid by the City annually. In response to officer complaints about the lack of training received, the City seeks to direct more money into the training budget while capping education reimbursement noting that both are consolidated under one budget line for the Police Department. Disputing that it is playing a "shell game" with education reimbursement and training funds, the City views its proposal as a reasonable balance between the desire of the officers to receive education reimbursement and the needs of the department for additional training of all staff, not just those who opt to take undergraduate courses. Noting that a college degree is not required for hiring or promotions, the City understands that there are benefits to an educated workforce but feels the need to place some limits on the amount spent annually on education reimbursement. The City feels there is very little benefit or not enough "bang for the buck" regarding reimbursement for graduate level coursework and notes that even with the proposed changes, its educational reimbursement provisions are substantially better than those of the comparable cities. In the City's view, its proposal will improve the over-all training of the department and not negatively impact upon those who use the education reimbursement.

#### Position of the Bargaining Unit

The Bargaining Unit views the City's proposal as a substantial take-away for which it receives nothing in return. The City would limit the access of the officers' educational opportunities to 60 hours of under-graduate college credit courses, limited to law enforcement, criminology or criminal justice. Graduate level classes would not be

reimbursed and the course must be scheduled outside the normal working hours and not interfere with the employee's duties for the City. Since most of the officers are working rotating shifts, this language will virtually limit the education opportunities to those officers working straight day shifts. It will not permit the majority of employees to take advantage of the education reimbursement. There has never been a difficulty in scheduling classes or with classes interfering with the employees' duties in the past. The City's proposed language requiring that the course not interfere with the employee's duties leaves considerable discretion in terms of class attendance where a supervisor may attempt to call an officer in for overtime or specialty duty. The Bargaining Unit also notes that there is no evidence of abuse on the employees' part of this provision. Adoption of the City's proposal will substantially restrict and limit the ability of officers to seek advanced degrees where they already have an A.A. or other college degree. The Bargaining Unit believes that the current language best meets the needs of the employees and the City for a trained highly educated workforce.


#### Findings of Fact and Recommendations

There are merits to both arguments advanced by the parties. This education reimbursement benefit is, however, a significant economic benefit currently enjoyed by the Bargaining Unit which it gained, presumably through negotiation in past bargains and fought to keep through the grievance arbitration process. Arbitrator Hill is correct in his observation that generally speaking an arbitrator should not upset prior *quid pro quos*. He stated

A neutral should keep in mind that, at one time a party may have "paid dearly" for a particular item and, thus should proceed with caution before drafting an award that would upset the "quid pro quo."<sup>2</sup>

Because the benefit is significant and the proposed modifications are substantial "take-aways," it is not recommended that the City be granted its proposed language through the fact-finding/interest arbitration process without showing evidence that it has provided a *quid pro quo* for the modifications. This fact-finder will not recommend that the City be granted that which it did not gain in negotiations. **It is recommended that the City's proposal on Education Reimbursement be rejected and that the current contract language remain in the 7/1/07-6/30/08 agreement.**

Dated this 14th day of March 2007, in Madison, Wisconsin.

  
Mary Jo Schiavoni, Fact-Finder

<sup>2</sup> P.16 of 6/4/06 Award – City of Clinton, IA & Clinton Police Dept Unit

CERTIFICATE OF SERVICE

I certify that on the 14<sup>th</sup> day of March, 2007, I served the foregoing Findings of Fact, Recommendations and Report of Fact-Finder upon each of the parties in this matter by mailing a copy to them at their respective addresses as shown below:

For the City:

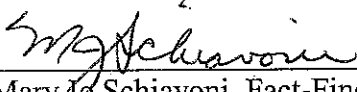
Attorney William J. Sueppel  
Meardon, Sueppel & Downer, P.L.C.  
122 South Linne Street  
Iowa City, Iowa 52240-1830

For the Bargaining Unit:

Attorney G. Wylie Pillers III  
1127 N. 2nd Street Suite D-2  
Clinton IA 52732

I further certify that on the 14<sup>th</sup> day of March, 2007, I will submit these Findings of Fact, Recommendations and Report of Fact-Finder for filing by mailing it to the Iowa Public Employment Relations Board, 510 East Twelfth Street, Suite 1B, Des Moines Iowa 50319.

March 14, 2007

  
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Mary Jo Schiavoni, Fact-Finder